

SOUTH AFRICA / JUDGMENT

L v L (26758/2014) [2017] ZAGPPHC 895 (7 December 2017) [2017] ZAGPPHC 895

COURT

North Gauteng High Court, Pretoria

BEFORE

DP de Villiers

CASE / FILE NUMBER

26758/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 26758/2014

Not

reportable

Not

of interest to other judges

Revised.

7/12/2017

L,

L Applicant

and

L,

B Respondent

Heard

on:

29 November 2017

Delivered

on:

7 December 2017

JUDGMENT

DE VILLIERS AJ:

- [1] This is an opposed application for amendment of the particulars of claim in divorce proceedings.
- [2] The matter started with a comprehensive notice of proposed amendments to the particulars of claim totalling about 20 pages and dated 22 March 2016. Most of the amendments were not objected to. Those amendments could be effected, but were not. The respondent has indicated that he has no objection to an order being made that such amendments be made. Accordingly, the first two orders made herein, are made by consent. They address the proposed amendments not objected to and hopefully will move the matter forward.
- [3] The respondent objected to the amendments set out in paragraph 2 of the notice of proposed amendments to the particulars of claim and as reflected in proposed amendments to the prayers in the particulars of claim, prayer 8.
- [4] The proposed prayer reads:

'Alternatively to paragraph 7 hereof (a forfeiture of benefits clause) and in the event the honourable court not being inclined to grant relief set forth in paragraphs 7(1) through 7(3) here above, then ordering: that adjustment be effected in favour of the Plaintiff against the Defendant on division of matrimonial joint estate in the sum of R'

- [5] The parties are married in community of property. Leaving aside the omission to state an amount in the proposed prayer, the issue in this matter is the origin of such a claim for adjustment. It is not a claim as envisaged in section 15(9)(b) of the Matrimonial Property Act 88 of 1984 (underlining added):

'When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16 (2), and-

- (a) . . . ;
- (b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate.'
- [6] The pleaded basis for the relief is a purported damages claim, a purported enrichment claim, or perhaps an additional maintenance

claim (in part). The proposed amendment commences with a statement that the plaintiff 'alleges that the defendant caused her to incur additional undue expenses which she is paying out of her income earned without any contribution by the defendant'. Those expenses are then pleaded as the cost of renting alternative accommodation, having been evicted from the matrimonial home (and still being obliged to make payment of monthly mortgage bond instalments). The other expenses claimed are the 'value' of expenses incurred to repair or improve the matrimonial home. The proposed amendment then ends with:

'IN THE PREMISES the Defendant would be unduly enriched and Plaintiff unduly prejudiced if the former is not ordered to contribute half of the expenses incurred by the Plaintiff toward payment of the alternative accommodation.'

[7] The objection to the proposed amendment is that it would render the particulars of claim excipiable. This objection is based upon the fact that the parties are married in community of property. There could be no enrichment claim prior to divorce, there could be no damages claim prior to divorce, and no claim for maintenance has been pleaded. These objections are sound. An amendment that would render a pleading excipiable, should not be allowed. See Erasmus, Superior Court Practice, Volume 2, RS 3, 2016, 01-338-RS 3, 2016, D1-338A.

I accordingly grant the following order:

1. The application is dismissed with costs;
2. The applicant is authorised to amend its particulars of claim as set out in paragraphs 1, 3, 4, and 5 of its notice of proposed amendments to the particulars of claim dated 22 March 2016 within fifteen days from date of this order;
3. The applicant is authorised to amend its particulars of claim as set out in prayers 1 to 7, 9 and 10 in paragraphs 8 of its notice of proposed amendments to the particulars of claim dated 22 March

2016 within fifteen days from date of this order;

DP de Villiers AJ

On behalf of the Applicant: Adv T J Magano

Instructed by: Kekana Hlatswayo Radebe Attorneys

On behalf of the Respondent: Adv M Bouwer

Instructed by: Shapiro & Ledwaba Attorneys

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Prepared on 9 October 2026 · Esheria